

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

PROMESA Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

Re: ECF Nos. 2962, 2971

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA Title III

Case No. 17 BK 4780-LTS

**This Informative Motion relates
only to PREPA**

**JOINT INFORMATIVE MOTION IN CONNECTION
WITH SUCESIÓN SASTRE WIRSHING'S MOTION FOR RELIEF OF STAY**

To the Honorable United States District Judge Laura Taylor Swain:

1. The Puerto Rico Electric Power Authority (“PREPA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) as PREPA’s

¹ The Debtors in these Title III cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s Federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 04780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

sole representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management and Economic Stability Act* (“PROMESA”), 48 U.S.C. §§ 2101–2241,² and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), and Sucesión Sastre Wirshing (the “Movant”) respectfully submit this informative motion to inform the court that PREPA and the Movant have consensually resolved the *Motion for Relief from Stay* (the “Stay Motion”) [Case No. 17-bk-03283, ECF No. 2962] filed by the Movant.

Background

1. On April 26, 2018, the Movant filed the Stay Motion.
2. On April 27, 2018, the Court entered the *Order Scheduling Briefing of Motion for Relief of Stay* [Case No. 17-bk-03283, ECF No. 2971] setting forth the following objection and reply deadlines in connection with the Stay Motion:
 - a. Any opposition is due on May 10, 2018.
 - b. Any reply is due on May 17, 2018.
3. On May 10, 2018, PREPA and the Movant entered into a stipulation to resolve the Stay Motion in its entirety. The executed stipulation is attached hereto as Exhibit A.

[Remainder of the page is intentionally left blank.]

² The Oversight Board has authorized AAFAF to file this Joint Informative Motion on behalf of PREPA.

Dated: May 10, 2018

Respectfully Submitted,

/s/ Kevin D. Finger

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CERTIFICATION

I hereby certify that an electronic copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record in the captioned case.

/s/ *Kevin D. Finger*

Exhibit A

Stipulation

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et
al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

Re: ECF. Nos. 2962, 2971

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY

Debtor.

PROMESA
Title III

No. 17 BK 4780-LTS

**This Stipulation relates only to
PREPA**

**STIPULATION MODIFYING THE AUTOMATIC
STAY BETWEEN THE PUERTO RICO ELECTRIC
POWER AUTHORITY AND SUCESIÓN SASTRE WIRSHING**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

This stipulation (the “Stipulation”) is made as of May 10, 2018, by and between Debtor the Puerto Rico Electric Power Authority (“PREPA”) and Sucesión Sastre Wirshing (the “Movant”).²

RECITALS

WHEREAS, on July 2, 2017, PREPA, by and through the Oversight Board, as PREPA’s representative pursuant to PROMESA section 315(b), filed a petition with the United States District Court for the District of Puerto Rico (the “District Court”) under title III of PROMESA (the “Title III Case”);

WHEREAS, on August 17, 2017, as amended on October 24, 2017 and April 4, 2018, the District Court entered the *Order Amending Case Management Procedures* (the “Case Management Order”), which revised the *Notice, Case Management and Administrative Procedures* to implement a protocol (the “Lift Stay Protocol”) for filing motions for relief from the automatic stay set forth in Bankruptcy Code sections 362(a) and 922(a),³ made applicable to the Title III Case by PROMESA section 301(a) (the “Title III Stay”) [Case No. 17-bk-3283; ECF Nos. 1065, 1512, 2839];

WHEREAS, under the Lift Stay Protocol, the Movant is required to (a) send notice (the “Lift Stay Notice”) to counsel to the Oversight Board and the Puerto Rico Fiscal Agency and

² The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), has authorized the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) to enter into this Stipulation on behalf of PREPA. AAFAF is an entity of the Commonwealth of Puerto Rico authorized to act on behalf of PREPA pursuant to the authority granted to it under the Enabling Act of the Fiscal Agency and Financial Advisory Authority, Act 2 2017.

³ In a title III case, Bankruptcy Code section 922 extends the self-executing provisions of Bankruptcy Code section 362 to, among other things, actions against officers and inhabitants of the debtor to enforce claims against the debtor. See *Order Pursuant to PROMESA Section 301(a) and Bankruptcy Code Sections 105(a), 362(a), 365, and 922 Confirming (I) Application of the Automatic Stay to Government Officers, Agents, and Representatives, (II) Stay of Prepetition Lawsuits, and (III) Application of Contract Protections* [ECF No. 543] (“For the avoidance of doubt, the protections of Bankruptcy Code section 922(a)(1) with respect to officers and inhabitants of the Debtors, as set forth in paragraph 4(a) [of the Order], apply in all respects to the Debtors’ officers in both their official and personal capacities with respect to actions whereby parties pursuing such actions seek to enforce claims against any of the Debtors.”).

Financial Advisory Authority (“AAFAF”) to advise them of the Movant’s intent to seek relief from the Title III Stay at least fifteen (15) business days prior to filing a motion seeking such relief (the “Lift Stay Notice Period”) and (b) meet and confer with PREPA during the Lift Stay Notice Period;

WHEREAS, on March 14, 2018, the Movant sent a Lift Stay Notice to the Oversight Board and AAFAF requesting the lifting of the Title III Stay to allow the Movant to proceed with the cases captioned *Puerto Rico Electric Power Authority v. Sucesión Sastre Wirshing, et. al.*, civil case no. KEF2004-1226, and *Miguel Pedro Sastre Wirshing, et. al. v. Puerto Rico Electric Power Authority*, et. al., civil case no. KAC2011-0384 (collectively, the “Prepetition Actions”), before the Puerto Rico Court of First Instance, San Juan Part (the “Commonwealth Court”);

WHEREAS, on April 26, 2018, the Movant filed its *Motion for Relief from Stay* (the “Stay Motion”) [Case No. 17-bk-03283, ECF No. 2962] to lift the Title III Stay to allow the Prepetition Actions to proceed to a determination of the amount of just compensation;

WHEREAS, On April 27, 2018, the Court entered the *Order Scheduling Briefing of Motion for Relief of Stay* [Case No. 17-bk-03283, ECF No. 2971], which set the deadlines for any opposition to the Stay Motion to be due on May 10, 2018 and any reply to be due on May 17, 2018;

WHEREAS, PREPA and the Movant conferred and have resolved the Movant’s request for relief in the Stay Motion.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between PREPA and the Movant, through their counsel, each of whom represent and warrant they possess the requisite authority to bind the respective parties hereto, as follows:

1. The Stay Motion is resolved in its entirety.

2. The Title III Stay is hereby modified solely to the limited extent necessary to enable the Prepetition Actions to proceed to judgment before the Commonwealth Court; provided, however, the Title III Stay shall continue to apply in all other respects to the Prepetition Actions, including, but not limited to, the execution and enforcement of any judgment, injunction, any claims for money damages, and provisional remedies against PREPA, if any, or any other Title III Debtor.

3. It is expressly understood by the Movant that nothing contained in this Stipulation shall: (a) require PREPA or any other Title III Debtor to satisfy or pay any monies allegedly owed to the Movant regarding the claims asserted in the Prepetition Actions; or (b) constitute a determination of any type of liability or monetary claim of any kind as to PREPA or any other Title III Debtor.

4. It is understood by the Movant that nothing contained in this Stipulation shall operate as a waiver or modification of the Title III Stay to permit the prosecution against PREPA, or any of the Title III debtors, of any claim or claims by anyone other than the Movant as provided for herein and PREPA reserves all rights, defenses, and protections with respect to any matters pending or that may arise in or relate to the Title III Case, including the treatment of any claim arising from the Prepetition Actions under a plan of adjustment or otherwise in the Title III Case.

5. PREPA and the Movant represent and warrant that they are properly and fully empowered to enter into and execute this Stipulation, that they know of no contractual commitment or legal limitation of, impediment to, or prohibition against their entry into this Stipulation, and that the Stipulation is legal, valid, and binding upon them.

6. Neither this Stipulation, nor any statement made, action, or position taken, or document prepared or executed in connection with the negotiation, execution, or implementation

of this Stipulation shall be deemed to be, or construed as (a) an admission by any party of any liability, wrongdoing, act, or matter or that any claim or defense has or lacks merit; (b) a waiver of PREPA's rights to dispute, contest, setoff, or recoup any claim, including any claims asserted by the Movant in the Prepetition Actions or assert any related rights, claims, or defenses and all such rights are reserved; or (c) an approval or assumption of any agreement or contract between the parties under Bankruptcy Code section 365.

7. Nothing in this Stipulation shall be deemed or construed as: (a) creating or conferring any right upon any persons or entities (other than the Movant as expressly provided in this Stipulation), or (b) evidence of any willingness or obligation on PREPA's part to consent to any other or future modifications of or relief from the Title III Stay with respect to any persons or entities.

8. This Stipulation contains the entire agreement by and between the parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation.

9. This Stipulation shall be construed and interpreted in accordance with the laws of Puerto Rico. For purposes of construing this Stipulation, neither of the parties shall be deemed to have been the drafter of the Stipulation.

10. Electronic copies of signatures on this Stipulation are acceptable, and an electronic copy of a signature on this Stipulation is deemed an original. This Stipulation may be executed in counterparts, each of which is deemed an original, but when taken together constitute one and the same document.

11. This Stipulation may not be modified other than by a signed writing executed by the parties hereto.

12. The District Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

13. This Stipulation shall be immediately effective and enforceable upon execution.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF and in agreement herewith, by and through their counsel, the parties have executed and delivered this Stipulation as of the date first set forth above.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10th day of May, 2018.

/s/ Kevin D. Finger

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